

REMARKS

Claims 1-68 are pending. No amendments have been made by way of the present submission, thus, no new matter has been added.

In the outstanding Office Action the Examiner has required Applicants to select one of the following two groups pursuant to 35 U.S.C. § 121:

1. Claims 1-24, drawn to an assay method; and
2. Claims 25-68, drawn to a biochip.

Applicants respectfully traverse. The claims of Group 1 are directed to an assay method and the claims of Group 2 are drawn to a biochip. The Examiner has indicated at page 2 of the Restriction Requirement that inventions are distinct if it can be shown that either the process as claimed can be practiced by another materially different apparatus or by hand, or the apparatus as claimed can be used to practice another materially different process. The Examiner asserts in this case the method can be practiced by hand. Applicants submit that the Examiner has provided no support for his assertion. Further, even if having a different subclassification, Applicants submit that there is no undue burden placed upon the Examiner to search and consider all currently pending claims. Accordingly, Applicants traverse the Examiner's Restriction Requirement and request that all currently pending claims 1-68 be examined.

However, in order to be fully responsive to the outstanding Restriction Requirement Applicants hereby elect the claims of Group 1. That is, Applicants elect claims 1-24, drawn to an assay method. This is an election with traverse.


Favorable action on the merits is respectfully requested. Further, in the event that the Examiner will not search or consider the claims of Group 2, Applicants hereby reserve their right to file a divisional application directed to the claims of Group 2.

If the Examiner has any questions or comments, please contact Craig A. McRobbie (Registration No. 42,874) at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: July 14, 2005

Respectfully submitted,

By  #42,874
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